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11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

13 FRANCIE E. MOELLER et al,

14 Plaintiffs,

15 v.

16 TACO BELL CORP.,

17 Defendant.
18 _____

Case No. C 02 5849 MJJ ADR

**~~PROPOSED~~ ORDER GRANTING
PLAINTIFFS' MOTION TO MAKE
FINDINGS OF FACT, AND TO ADOPT
THE SPECIAL MASTER'S REPORTS
WITH LIMITED OBJECTIONS**

**Hearing Date and Time: To be
determined at the January 24, 2007
Status Conference**

19 The Court, having considered Plaintiffs' Motion to Make Findings of Fact, and to
20 Adopt the Special Master's Reports with Limited Objections ("Plaintiffs' Motion") and all
21 opposition thereto, hereby finds as follows.

22 1. In 2004, the parties jointly retained Bob Evans to survey 20 of the restaurants at
23 issue in this case, which they referred to as the "Pilot Program" restaurants. See Memo. of
24 Understanding (May 19, 2004) (Ex. 3 to the Declaration of Amy F. Robertson in Support of
25

26 Case No. C 02 04823 RS ADR

Declination to Proceed Before a Magistrate Judge and Reassignment to a United States District Judge

1 Plaintiffs' Motion to Make Findings of Fact, and to Adopt the Special Master's Reports with
2 Limited Objections ("Robertson Declaration" or "Robertson Decl."). The parties have
3 stipulated that the measurements and dimensions set forth in Mr. Evans's survey reports for the
4 20 Pilot Program restaurants are accurate. See id. at ¶ 1; Jt. Status Conf. Statement at ¶ 31
5 (Feb. 1, 2005, Docket No. 157). Pursuant to this stipulation, the Court hereby makes as
6 findings of facts the dimensions and measurements of the architectural elements on the dates
7 they were surveyed, as set forth in the survey reports for the Pilot Program restaurants, which
8 are attached as exhibits 4 through 23 to the Robertson Declaration.

9 2. At the parties' joint request, this Court appointed Mr. Evans as a Special Master
10 to survey the restaurants at issue in this case. See Order Appointing Special Master ("Special
11 Master Order") (October 5, 2004, Docket No. 101). The Special Master Order required the
12 parties to confer on a monthly basis concerning the results of the Special Master surveys, and
13 all measurements or dimensions the accuracy of which were not challenged during these
14 monthly meetings would become findings of fact. See Special Master Order at ¶¶ 7(d) & 8(b).
15 The deadline to challenge the accuracy of the Special Master's measurements was later
16 extended to 45 days after Defendant's receipt of the last of the Plaintiffs' Meet and Confer
17 Charts. See Order Granting Stipulated Motion to Continue the Status Conference Currently Set
18 for May 18, 2006 and to Re-Set Pre-Trial Dates ("April 25 Order") at 2 (Apr. 25, 2006, Docket
19 No. 203). Plaintiffs produced their last Meet and Confer charts on June 8, 2006, and thus the
20 deadline for Defendant to challenge the accuracy of the Special Master's measurements was
21 July 24, 2006.

22 3. Plaintiffs have submitted a list of Special Master measurements to which the
23 Defendant did not object on or before July 24, 2006. See Ex. 1 to Robertson Declaration.
24 Pursuant to the Special Master Order and the April 25 Order, as well as the Ninth Circuit's
25

1 decision in Stone v. City and County of San Francisco, 968 F.2d 850 (9th Cir. 1992), these
2 measurements and dimensions of the architectural elements on the dates they were surveyed,
3 set forth in exhibit 1 to the Robertson Declaration, are hereby made findings of fact.

4 4. Paragraph 8(b) of the Special Master Order provided that “[a]ny portion of the
5 Special Master’s Report that is not the subject of a timely objection or motion to modify shall
6 be adopted by the Court as a finding of fact.” Plaintiffs have submitted a list of dimensions
7 and measurements of architectural elements on the dates they were surveyed, to which
8 Defendant did not properly object by January 12, 2007. These measurements are hereby made
9 findings of fact.

10 IT IS SO ORDERED.

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12 DATED: 9/20/2007 _____



26 Case No. C 02 04823 RS ADR

Declination to Proceed Before a Magistrate Judge and Reassignment to a United States District Judge